

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE BILL NO. 95
93RD GENERAL ASSEMBLY

Reported from the Special Committee on Urban Issues April 25, 2005 with recommendation that House Committee Substitute for Senate Substitute for Senate Bill No. 95 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

0223L.10C

AN ACT

To repeal sections 701.304, 701.306, 701.308, 701.309, 701.311, 701.312, 701.314, 701.320, 701.328, and 701.337, RSMo, and to enact in lieu thereof fourteen new sections relating to lead poisoning, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 701.304, 701.306, 701.308, 701.309, 701.311, 701.312, 701.314, 701.320, 701.328, and 701.337, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 143.603, 701.304, 701.305, 701.306, 701.308, 701.309, 701.311, 701.312, 701.313, 701.314, 701.317, 701.320, 701.328, and 701.337, to read as follows:

143.603. 1. In each taxable year beginning on or after January 1, 2005, each individual or corporation entitled to a tax refund in an amount sufficient to make a designation under this section may designate that one dollar or any amount in excess of one dollar on a single return, and two dollars or any amount in excess of two dollars on a combined return, of the refund due be credited to the childhood lead testing fund created in section 701.345, RSMo. The contribution designation authorized by this section shall be clearly and unambiguously printed on the first page of each income tax return form provided by this state. If any individual or corporation that is not entitled to a tax refund in an amount sufficient to make a designation under this section wishes to make a contribution to the childhood lead testing fund, such individual or corporation may, by separate check, draft, or other negotiable instrument, send in with the payment of taxes, or may send in separately, that amount, clearly

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

designated for the childhood lead testing fund, the individual or corporation wishes to contribute. The department of revenue shall forward such amount to the state treasurer for deposit to the childhood lead testing fund as provided in subsection 2 of this section.

2. The director of revenue shall transfer at least monthly all contributions designated by individuals under this section to the state treasurer for deposit to the childhood lead testing fund.

3. The director of revenue shall transfer at least monthly all contributions designated by the corporations under this section, less an amount sufficient to cover the cost of collection and handling by the department of revenue, to the state treasurer for deposit to the childhood lead testing fund.

4. A contribution designated under this section shall only be transferred and deposited in the childhood lead testing fund after all other claims against the refund from which such contribution is to be made have been satisfied.

701.304. 1. A representative of the department, or a representative of a unit of local government or health department licensed by the department for this purpose, may conduct an inspection or a risk assessment at a dwelling or a child-occupied facility for the purpose of ascertaining the existence of a lead hazard under the following conditions:

(1) The department, owner of the dwelling, and an adult occupant of a dwelling which is rented or leased have been notified that an occupant of the dwelling or a child six or fewer years of age who regularly visits the child-occupied facility has been identified as having an elevated blood lead level as defined by rule; and

(2) The inspection or risk assessment occurs at a reasonable time; and

(3) The representative of the department or local government presents appropriate credentials to the owner or occupant; and

(4) Either the dwelling's owner or adult occupant or the child-occupied facility's owner or agent grants consent to enter the premises to conduct an inspection or risk assessment; or

(5) If consent to enter is not granted, the representative of the department, local government, or local health department may petition the circuit court for an order to enter the premises and conduct an inspection or risk assessment after notifying the dwelling's owner or adult occupant in writing of the time and purpose of the inspection or risk assessment at least forty-eight hours in advance. The court shall grant the order upon a showing that an occupant of the dwelling or a child six or fewer years of age who regularly visits the child-occupied facility has been identified as having an elevated blood lead level as defined by rule.

2. In conducting such an inspection or risk assessment, a representative of the department, or representative of a unit of local government or health department licensed by the department for this purpose, may remove samples necessary for laboratory analysis in the determination of the presence of a lead-bearing substance or lead hazard in the designated dwelling or child-occupied facility.

3. The director shall assess fees for licenses and accreditation **and impose administrative penalties** in accordance with rules promulgated pursuant to sections 701.300 to [701.330] **701.338**. All such fees **and fines** shall be deposited into the state treasury to the credit of the public health services fund established in section 192.900, RSMo.

701.305. The department of health and senior services shall provide on its Internet web site educational information that explains the rights and responsibilities of the property owner and tenants of a dwelling and the lead inspectors, risk assessors, and the lead abatement contractors.

701.306. If the department, or a representative of a unit of local government or health department licensed by the department for this purpose, determines that there is a lead hazard at a dwelling or child-occupied facility which poses a risk of adverse health effects upon young children, the department or its licensed local representative:

(1) Shall provide written notification to the owner and an adult occupant of the dwelling or the owner or agent of a child-occupied facility of the confirmed presence of a lead hazard which may lead to adverse health effects upon small children who reside in or regularly visit the residence or facility. The written notification shall include [recommendations] **options** appropriate for reduction of the lead hazard to an acceptable level and a reasonable time period for abating or establishing interim controls for any such lead hazard that is accessible to small children who reside in or regularly visit the dwelling or facility; and

(2) May provide written notification to the parents or guardians of children who regularly visit a child-occupied facility of the confirmed presence of a lead hazard that may lead to adverse health effects; and

(3) May provide a copy of the written notification to the local health officers.

701.308. 1. Upon receipt of written notification **as described in section 701.306**, of the presence of a lead hazard, the owner shall comply with the requirement for abating or establishing interim controls for the lead hazard in a manner consistent with the [recommendations described] **options provided** by the department and within the applicable time period. If the dwelling or child-occupied facility is a rental or leased property, the owner may remove it from the rental market.

2. Except as provided in subsection 1 of this section, no tenant shall be evicted because an individual with an elevated blood lead level or with suspected lead poisoning resides in the dwelling, or because of any action required of the dwelling owner as a result of enforcement of sections 701.300 to 701.338. The provisions of this subsection shall not operate to prevent the owner of any such dwelling from evicting a tenant for any other reason as provided by law.

3. No child shall be denied attendance at a child-occupied facility because of an elevated blood lead level or suspected lead poisoning or because of any action required of the facility owner as a result of enforcement of sections 701.300 to 701.338. The provisions of this subsection shall not prevent the owner or agent of any such child-occupied facility from denying attendance for any

other reason allowed by law.

4. [Whenever] **A representative of the department, or a representative of a unit of local government or health department licensed by the department for this purpose, is authorized to re-enter a dwelling or child-occupied facility to determine if the owner has taken the required actions for abating or establishing interim controls for the lead hazard in a manner consistent with the options provided by the department and lead hazards have been reduced to an acceptable level. If consent to enter is not granted, the representative of the department, local government, or local health department may petition the court for an order to enter the premises to determine if the owner has taken the required actions for abating or establishing interim controls for the lead hazard in a manner consistent with the options provided by the department, and provided that the lead hazards have been reduced to an acceptable level. The court shall grant the order upon a showing that the representative of the department, local government, or local health department has attempted to notify the dwelling's owner or adult occupant in writing of the time and purpose of the reentry at least forty-eight hours in advance.**

5. **Upon reentry, if the department[,]** or a representative of a unit of local government[,]
or local health department licensed by the department for this purpose, finds[, after providing written notification to the owner,] that **the owner has not taken the** required actions [which will result in the reduction of a lead hazard in a dwelling or child-occupied facility have not been taken] **for abating or establishing interim controls for the lead hazard in a manner consistent with the options provided by the department, and lead hazards have not been reduced to an acceptable level,** the owner shall be deemed to be in violation of sections 701.300 to 701.338. Such violation shall not by itself create a cause of action. The department or the local government or local health department shall:

(1) Notify in writing the owner found to be causing, allowing or permitting the violation to take place; and

(2) Order that the owner of the dwelling or child-occupied facility shall cease and abate causing, allowing or permitting the violation and shall take such action as is necessary to comply with this section and the rules promulgated pursuant to this section.

[5.] **6.** If [no action is taken pursuant to subsection 4 of this section which would result in abatement or interim control of the lead hazard within the stated time period], **upon reentry, the lead hazard has not been reduced to an acceptable level,** the following steps may be taken:

(1) The local health officer and local building officials may, as practical, use such community or other resources as are available to effect the relocation of the individuals who occupied the affected dwelling or child-occupied facility until the owner complies with the notice;
or

(2) The department[,]
or representative of a unit of local government or health department licensed by the department for this purpose, [shall] **may** report any violation of sections 701.300 to

701.338 to the prosecuting attorney of the county in which the dwelling or child-occupied facility is located and notify the owner that such a report has been made. The prosecuting attorney shall seek injunctive relief to ensure that the lead hazard is abated or that interim controls are established.

7. In commercial lead production areas, if the department identifies lead hazards due to paint, mini-blinds, or other household products/sources in a property where a child has been identified with an elevated blood level, the owner shall comply with the requirement for abating or establishing interim controls for the above stated hazards, in a manner consistent with the recommendations described by the department and within the applicable time period. Residential property owners in commercial lead production areas shall not be deemed in violation pursuant to section 701.308, after compliance with the requirement for abating or establishing interim controls established by the department per the initial risk assessment, or made to pay for any type of lead remediation necessary due to the commercial lead production and transport. If the residential property is owned by a commercial lead production or transport company, which has not taken the required actions for abating or establishing interim controls for the lead hazard in a manner consistent with the options provided by the department and the lead hazards have not been reduced to an acceptable level, the commercial lead production or transport company shall be deemed to be in violation of sections 701.300 to 701.308.

701.309. 1. At least ten days prior to the onset of a lead abatement project, the lead abatement contractor conducting such an abatement project shall:

- (1) Submit to the department a written notification as prescribed by the department; and
- (2) Pay a notification fee of twenty-five dollars.

2. The lead abatement contractor and any public agency, local community organization, government agency, or quasi-government agency issuing grants or loans for lead abatement projects or interim controls shall inform the owners and tenants of a dwelling that information regarding potential lead hazards can be accessed on the department's Internet web site.

3. In addition to the specified penalties in section 701.320, failure to notify the department prior to the onset of a lead abatement project shall result in a fine of two hundred fifty dollars imposed against the lead abatement contractor for the first identified offense, five hundred dollars for the second identified offense, and thereafter, fines shall be doubled for each identified offense.

4. Written notification as prescribed by the department shall include disclosure of any potential lead hazards to the owners and tenants of a dwelling by the licensed risk assessor who conducted the initial risk assessment.

5. If the lead abatement contractor is unable to comply with the requirements of subsection 1 of this section because of an emergency situation as defined by rule, the contractor shall:

- (1) Notify the department by other means of communication within twenty-four hours of the

onset of the project; and

(2) Submit the written notification and notification fee prescribed in subsection 1 of this section to the department no more than five days after the onset of the project.

6. Upon completion of the abatement, the lead abatement contractor shall submit to the department written notification and the final clearance results report.

701.311. 1. Any authorized representative of the department who presents appropriate credentials may, at all reasonable times, enter public or private property to conduct compliance inspections of lead abatement contractors as may be necessary to implement the provisions of sections 701.300 to 701.338 and any rules promulgated pursuant to sections 701.300 to 701.338.

2. It is unlawful for any person to refuse entry or access requested for inspecting or determining compliance with sections 701.300 to 701.338. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any circuit or associate circuit judge having jurisdiction for the purpose of enabling such inspections.

3. Whenever the director determines through a compliance inspection that there are reasonable grounds to believe that there has been a violation of any provision of sections 701.300 to 701.338 or the rules promulgated pursuant to sections 701.300 to 701.338, the director [shall] **may** give notice of such alleged violation to the owner or person responsible, as provided in this section. The notice shall:

(1) Be in writing;

(2) Include a statement of the reasons for the issuance of the notice;

(3) Allow reasonable time as determined by the director for the performance of any act the notice requires;

(4) Be served upon the property owner or person responsible as the case may require, provided that such notice shall be deemed to have been properly served upon such person when a copy of such notice has been sent by registered or certified mail to the person's last known address as listed in the local property tax records concerning such property, or when such person has been served with such notice by any other method authorized by law;

(5) Contain an outline of corrective action which is required to effect compliance with sections 701.300 to 701.338 and the rules promulgated pursuant to sections 701.300 to 701.338.

4. If an owner or person files a written request for a hearing within ten days of the date of receipt of a notice, a hearing shall be held within thirty days from the date of receipt of the notice before the director or the director's designee to review the appropriateness of the corrective action. The director shall issue a written decision within thirty days of the date of the hearing. Any final decision of the director may be appealed to the administrative hearing commission as provided in chapter 621, RSMo. Any decision of the administrative hearing commission may be appealed as provided in sections 536.100 to 536.140, RSMo.

5. The attorney general or the prosecuting attorney of the county in which any violation of sections 701.300 to 701.338 or the rules promulgated pursuant to sections 701.300 to 701.338,

occurred shall, at the request of the city, county or department, institute appropriate proceedings for correction.

6. When the department determines that an emergency exists which requires immediate action to protect the health and welfare of the public, the department is authorized to seek a temporary restraining order and injunction. Such action shall be brought at the request of the director by the local prosecuting attorney or the attorney general. For the purposes of this subsection, an "emergency" means any set of circumstances that constitutes an imminent health hazard or the threat of an imminent health hazard.

7. Nothing in sections 701.300 to 701.338 or rules promulgated pursuant to sections 701.300 to 701.338 shall be construed as requiring the department of health and senior services to issue a notice of violation pursuant to subsection 3 of section 701.311, whenever the department of health and senior services believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

8. The department shall develop, publish, and post on its web site an enforcement manual that:

(1) Delineates the categories of violations for which the department shall issue a notice of violation under subsection 3 of this section; and

(2) Delineates the categories of violations for which the department may either issue a notice of violation under subsection 3 of this section or issue a suitable written notice or warning.

701.312. 1. The director of the department of health and senior services shall develop a program to license lead inspectors, risk assessors, lead abatement supervisors, lead abatement workers, project designers and lead abatement contractors. The director shall promulgate rules and regulations including, but not limited to:

(1) The power to issue, restrict, suspend, revoke, deny and reissue licenses;

(2) The power to issue notices of violation, written notices and letters of warning;

(3) The ability to enter into reciprocity agreements with other states that have similar licensing provisions;

[(3)] (4) Fees for any such licenses;

[(4)] (5) Training, education and experience requirements; and

[(5)] (6) The implementation of work practice standards, reporting requirements and licensing standards.

2. [The director shall issue temporary risk assessor licenses to persons who, as of August 28, 1998, are licensed by the department as lead inspectors. The temporary risk assessor licenses issued pursuant to this subsection shall expire upon the same date as the expiration date of such person's lead inspector license. The director shall set forth standards and conditions under which temporary risk assessor licenses shall be issued.] **The director shall require, as a condition of licensure, lead abatement contractors to purchase and maintain liability and errors and**

omissions insurance. The director shall require a licensee or an applicant for licensure to provide evidence of their ability to indemnify any person that may suffer damage from lead-based paint activities of which the licensee or applicant may be liable.

701.313. 1. Any local community organization, government agency, or quasi-government agency issuing grants or loans for lead abatement projects must provide written notification to the department no later than ten days prior to the onset of a lead abatement project. The written notification shall include, but not be limited to, the name of the lead abatement contractor, the address of the property on which the lead abatement project shall be conducted, and the date on which the lead abatement project shall be conducted.

2. If the local community organization, government agency, or quasi-government agency fails to provide written notification for each property pursuant to subsection 1 of this section, a fine of two hundred fifty dollars shall be levied by the department.

3. If the local community organization, the government agency, or quasi-government agency is unable to comply with the requirements in subsection 1 of this section due to an emergency situation, as defined by the department, the local community organization, government agency, or quasi-government agency shall:

(1) Notify the department by other means of communication within twenty-four hours of the onset of the lead abatement project; and

(2) Provide written notification to the department no later than five days after the onset of the lead abatement project.

701.314. The director of the department of health and senior services shall develop a program to accredit training providers to train lead inspectors, risk assessors, lead abatement supervisors, lead abatement workers and project designers. The director shall promulgate rules and regulations including, but not limited to:

(1) The power to grant, restrict, suspend, revoke, deny or renew accreditation;

(2) The power to issue notices of violation, written notices and letters of warning;

(3) The ability to enter into reciprocity agreements with other states that have similar accreditation provisions;

[(3)] (4) Fees for any such accreditation;

[(4)] (5) The curriculum for training;

[(5)] (6) The development of standards for accreditation; and

[(6)] (7) Procedures for monitoring, training, record keeping and reporting requirements for training providers.

701.317. 1. In addition to any other remedy provided by law, upon a determination by the director that a provision of section 701.300 to 701.338, or a standard, limitation, order, rule or regulation promulgated pursuant thereto, or a term or condition of any license has been violated, the director may issue an order assessing an administrative penalty upon the violator under this section. An administrative penalty shall not be imposed until the director

has issued a notice of violation pursuant to section 701.311 to the violator regarding the same type of violation within the calendar year. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed under this section and that the person subject to the penalty may appeal as provided by this section. Any such order that fails to state the statute under which the penalty is being sought, the manner of collection or rights of appeal shall result in the state's waiving any right to collection of the penalty.

2. The director shall promulgate rules and regulations for the assessment of administrative penalties. Such rules shall take into consideration the harm or potential harm which the violation causes, or may cause, the violator's previous compliance record, and any other factors which the department may reasonably deem relevant.

3. An administrative penalty shall be paid within sixty days from the date of issuance of the order assessing the penalty. Any person subject to an administrative penalty may appeal to the department within ten days after receipt of the imposition of penalty. Upon receipt of a request for hearing, the department shall schedule the hearing to be held within thirty days. Any appeal will stay the due date of such administrative penalty until the appeal is resolved. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed. An action may be brought in the appropriate circuit court to collect any unpaid administrative penalty, and for attorney's fees and costs incurred directly in the collection thereof.

4. An administrative penalty shall not be increased in those instances where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty. Any administrative penalty must be assessed within two years following the department's initial discovery of such alleged violation, or from the date of the department in the exercise of ordinary diligence should have discovered such alleged violation.

5. Any final order imposing an administrative penalty is subject to judicial review on the record upon the filing of a petition pursuant to section 536.100, RSMo, by any person subject to the administrative penalty. The appeal shall be filed in the circuit court of the county where the violation occurred.

6. The director may elect to assess an administrative penalty, or, in lieu thereof, to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court.

7. The penalties collected pursuant to this section shall be deposited in the "Missouri Lead Abatement Loan Fund" as established in section 701.337. Such penalties shall not be considered charitable contributions for tax purposes.

701.320. 1. Except as otherwise provided, violation of the provisions of sections 701.308, 701.309, 701.310, 701.311 and 701.316 is a class A misdemeanor.

2. Any lead inspector, risk assessor, lead abatement supervisor, lead abatement

worker, project designer, or lead abatement contractor who engages in a lead abatement project while such person's license, issued under section 701.312, is under suspension or revocation is guilty of a class D felony.

701.328. 1. The department of health and senior services shall protect the identity of the patient and physician involved in the reporting required by sections 701.318 to 701.349. Such identity shall not be revealed except that the identity of the patient shall be released only upon written consent of the patient. The identity of the physician shall be released only upon written consent of the physician.

2. The department may release without consent any information obtained pursuant to sections 701.318 to 701.349, including the identities of certain patients or physicians, when the information is necessary for the performance of duties by public employees within, or the legally designated agents of, any **federal**, state, or local agency, department or political subdivision, but only when such employees and agents need to know such information to perform their public duties.

3. The department shall use or publish reports based upon materials reported pursuant to sections 701.318 to 701.349 to advance research, education, treatment and lead abatement. The department shall geographically index the data from lead testing reports to determine the location of areas of high incidence of lead poisoning. The department shall provide qualified researchers with data from the reported information upon the researcher's compliance with appropriate conditions as provided by rule and upon payment of a fee to cover the cost of processing the data.

701.337. 1. The department shall have the authority to develop a plan for implementing a program that provides financial assistance via loans or grants to owners of dwellings or child-occupied facilities for performing lead abatement projects. In developing the plan, the department shall consult with the department of natural resources and the department of economic development.

2. The program shall accept applications from local entities for implementing at the local level of lead abatement projects that conform with the requirements of sections 701.300 to 701.338, and any rules promulgated thereunder. For purposes of this section, "local entities" shall include any municipality or county, any local not-for-profit community or housing organization or any community assistance project agency.

3. There is hereby established in the state treasury the "Missouri Lead Abatement Loan Fund". The state treasurer shall receive and deposit to the credit of the fund moneys from appropriations by the general assembly, **penalties paid because of violations of sections 701.301 to 701.338 and those rules promulgated thereto**, repayments by applicants of loans made pursuant to this section, including interest on such loans, and gifts, bequests, donations or any other payments made by any public or private entity for use in carrying out the provisions of this section. The state treasurer shall deposit all moneys in the fund in any of the qualified depositories of the state. All such deposits shall be secured in such a manner and shall be made upon such terms and conditions

as are now or may hereafter be provided by law relative to state deposits. Interest accrued by the fund shall be credited to the fund. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the credit of the general revenue fund at the end of the biennium. The fund shall be used solely for the purposes of this section and for no other purpose.

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